



# Questions and Answers on Civil Rights and School Reopening in the COVID-19 Environment

Helping schools reopen safely and in ways that support equity among students is a top priority for the Department of Education. The purpose of this Q&A is to help students, families, schools, and the public support all students' rights in educational environments, including in elementary and secondary schools and postsecondary institutions, during the COVID-19 pandemic.<sup>1</sup>

This question and answers (Q&A) document provides answers to common questions about schools' responsibilities under the civil rights laws the Office for Civil Rights (OCR) enforces.<sup>2</sup> These laws prohibit discrimination based on race, color, national origin, sex, disability, and age by state and local recipients of Federal financial assistance:<sup>3</sup>

- [Title VI of the Civil Rights Act of 1964](#) (Title VI), which prohibits discrimination based on race, color, or national origin;
- [Title IX of the Education Amendments Act of 1972](#) (Title IX), which prohibits discrimination based on sex; and
- [Section 504 of the Rehabilitation Act of 1973](#) (Section 504) and [Title II of the Americans with Disabilities Act of 1990](#) (Title II), which prohibit discrimination based on disability.<sup>4</sup>

For other questions about school reopening, please also see the school reopening materials the Department posted recently, including the

- [Department of Education's \(ED\) COVID-19 Handbook Volume I and Volume II](#)
- [Dear Colleague Letter regarding Assessments](#) (February 22, 2021)
- [Letter on Part B Implementation of IDEA Provision of Services in the Current COVID-19 Environment Q&A](#) (September 28, 2020)



UNITED STATES  
DEPARTMENT  
OF EDUCATION

Office for Civil Rights

May 13, 2021

<sup>1</sup> Other than in the statutory and regulatory requirements described here, this Q&A does not have the force or effect of law and does not bind the public. This guidance is designed to provide clarity regarding existing requirements under the law.

<sup>2</sup> The information here applies to all elementary and secondary schools, school districts, and postsecondary institutions that receive Federal financial assistance. This Q&A refers to all of these entities as "schools."

<sup>3</sup> OCR also enforces the [Age Discrimination Act of 1975](#) and the [Boy Scouts of America Equal Access Act](#).

<sup>4</sup> In the education context, OCR shares in the enforcement of Title II with the U.S. Department of Justice. Title II prohibits discrimination by state and local entities regardless of whether they receive Federal funds.

# Q

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**Who can file a discrimination complaint—and how to file:**

Students, parents and guardians, community members, and others who experience or observe discrimination in education programs or activities can file a discrimination complaint with OCR. To file a complaint, please use this [online form](#). For more information, see [How to File a Discrimination Complaint with the Office for Civil Rights](#) and this short video on [How to File a Complaint with the Office for Civil Rights](#).

This Q&A has four sections

1. Section 504 (discrimination based on disability)
2. Title VI (discrimination based on race, color, or national origin, including students who are English learners and students with undocumented status)
3. Title IX (discrimination based on sex)
4. Retaliation for reporting discrimination or filing a complaint

In the section discussing legal protections for students with disabilities, this Q&A provides some information about schools' responsibilities to eligible students who have individualized education programs (IEPs) under the [Individuals with Disabilities Education Act](#) (IDEA). IDEA is the Federal law that provides funds to help states make a free appropriate public education (FAPE) available to eligible students with disabilities. IDEA is administered by the Department through the Office of Special Education Programs (OSEP) in the [Office of Special Education and Rehabilitative Services](#) (OSERS).

**Additional questions?** Please note that this Q&A addresses many important issues on school reopening and civil rights but is not comprehensive. We recognize that you might have additional questions and invite you to send them to us at [ocr@ed.gov](mailto:ocr@ed.gov). On request, this publication is available in alternate formats, such as Braille or large print. For more information, please contact the Department's Alternate Format Center at 202-260-0818 or via e-mail at [alternateformatcenter@ed.gov](mailto:alternateformatcenter@ed.gov).

**Translation Services:** The Department of Education offers language assistance services for all publicly available Department information. These services are free of charge. For more information about interpretation or translation services, please see [Notice to Limited English Proficient Persons | U.S. Department of Education](#).

<b>Table of Contents</b> .....	3
<b>Section I: Students with Disabilities: Section 504</b> .....	6
<b>Elementary and Secondary Schools</b> .....	6
<b>Remote learning and Federal civil rights laws</b> .....	6
Do schools that provide remote learning have to comply with Section 504 during the reopening process if they were required to comply with Section 504 before the pandemic? .....	6
<b>Free Appropriate Public Education (FAPE)</b> .....	7
What is a school’s obligation to provide FAPE under Section 504 to eligible students with disabilities during a school closure when no remote learning is provided, such as occurred during the opening weeks of the pandemic? .....	7
What is a school’s obligation to provide FAPE under Section 504 to eligible students with disabilities when the school building is closed but remote learning is offered? .....	7
Is it discriminatory for a school to prioritize students with disabilities in returning to in-person learning? .....	7
Do state-wide, district-wide, or school-wide policies targeting students with disabilities that reduce or limit services for such students, without regard to their individualized needs, violate Section 504? .....	8
<b>Mask Exemptions</b> .....	8
Under Section 504, are schools required to make modifications for students regarding mask wearing? .....	8
Masks can hinder communication with people who are deaf or hard of hearing or who have speech disabilities. How can schools ensure effective communication with these students, educators, parents, or guardians? .....	9
<b>Physical Distancing</b> .....	9
Physical distancing might be difficult for students who have both visual and auditory impairments and require tactile interpreting or for students with disabilities whose education needs require close contact with school personnel. Must schools consider the student’s 504 plan when addressing the student’s disability-related needs that might be affected by physical distancing? .....	9
In circumstances in which schools address safe reopening requirements by cohorting or podding (i.e., when a group of students stay together for all classes and courses throughout the day), must schools develop cohorts and pods in a way that supports including students with disabilities with their nondisabled peers, consistent with Section 504 or students’ IEPs? .....	10

**Accessibility/Placement** ..... 11

Must the format of remote instructional content be modified to enable access for students with disabilities? ..... 11

When communicating with families and guardians about health and safety protocols and other information related to in-person and remote learning, must schools ensure that effective communication is provided to family members and guardians with disabilities? ..... 11

**No Waivers Prior to Providing Services Remotely to Students with Disabilities** ..... 12

May a school district refuse to deliver remote learning or other educational services, including related services, until parents or guardians of students with disabilities sign a waiver of their student’s right to services required by Section 504? ..... 12

**Postsecondary Institutions** ..... 12

Are postsecondary institutions that provide remote or hybrid learning required to comply with Federal disability laws? ..... 12

If postsecondary institutions offer remote learning, what academic adjustments, auxiliary aids and services, and modifications are they required to provide to students with disabilities to comply with Section 504? Are institutions required to offer modifications for instruction offered only in-person? ..... 12

What must a postsecondary institution providing remote learning do if it determines it cannot offer a student with a disability a particular academic adjustment? ..... 13

**Section 2: Title VI (Discrimination based on race, color, or national origin)** ..... 14

**Harassment in Elementary and Secondary Schools and Postsecondary Institutions** ..... 14

Must a school respond to harassment based on race, color, or national origin by another student, school staff, or others that occurs during remote instruction? ..... 14

What must schools do if an incident of harassment based on race, color, or national origin is reported, or school officials learn about incidents of harassment in remote or in-person instruction or in other school-related activities? ..... 15

**Discipline in Elementary and Secondary Schools** ..... 15

Are schools responsible for prohibiting discrimination based on race, color, or national origin in administering school discipline, even during remote instruction? ..... 15

What can parents or guardians do if their child’s school has inadequate resources for addressing the COVID-19 pandemic or is offering less instructional time with a teacher or fewer devices for remote learning when compared to other schools that are attended predominantly by students of another race, color, or national origin? . . . . . 16

**Elementary and Secondary School Students Who Have Moved, Are Experiencing Homelessness, or Are Undocumented** . . . . . 16

Can students with undocumented status enroll in a new school in the location where they are now living? . . . . . 16

When a family’s residency status has changed as a result of COVID-19 (for example, a parent lost a job, causing the family to move or lose access to stable housing), can students enroll in a new school in the location where they are now living? . . . . . 17

**English Learners in Elementary and Secondary Schools** . . . . . 18

Are schools required to provide language services to students who are English learners if instruction is being delivered remotely? . . . . . 18

What responsibilities do schools and school districts have to communicate information about remote learning and school health and safety measures to parents and caregivers in a language that families can understand? . . . . . 19

**Section 3: Title IX (discrimination based on sex, including sexual and gender-based harassment)** . . . . . 19

Must schools accept reports and complaints of discrimination based on sex under Title IX, including sexual and gender-based harassment, about incidents that take place in remote learning or other remote educational activities? . . . . . 20

Is a school required to investigate new and pending sexual harassment complaints under Title IX if it offers only remote learning? . . . . . 20

If a school is experiencing operational challenges relating to COVID-19, including suspending most or all in-person instruction and offering remote learning instead, may it modify its Title IX procedures for resolving sexual harassment complaints? . . . . . 21

**Section 4: Retaliation** . . . . . 22

Are school districts prohibited from retaliating against students, parents, caregivers, or others who complain about civil rights violations under one of the laws that OCR enforces? . . . . . 22

# Section I: Students with Disabilities: Section 504

Please note that the questions and answers in this section include several acronyms that are used frequently in addressing the rights of students with disabilities:

<b>FAPE:</b>	Free Appropriate Public Education
<b>IDEA:</b>	Individuals with Disabilities Education Act
<b>IEP:</b>	Individualized Education Program

## Elementary and Secondary Schools<sup>5</sup>

### *Remote learning and Federal civil rights laws*

#### **Question 1**

*Do schools that provide remote learning have to comply with Section 504 during the reopening process if they were required to comply with Section 504 before the pandemic?*

#### **Answer**

Yes, if a school had to comply with Section 504 before the pandemic, it still must meet Section 504's requirements, including for remote learning and during all stages of reopening. To meet the requirements of Section 504, school districts must make decisions that consider the health, safety, and well-being of all their students and staff, as well as their obligations to ensure that eligible students with disabilities are receiving FAPE under Section 504 and under IDEA. School districts must also ensure that students with disabilities have an equal opportunity to participate in extracurricular activities and are free from bullying and harassment based on disability as well as based on race, color, national origin, and sex (see below for more on these protections).

School districts' responsibilities include making individualized decisions about how to provide services to eligible students with disabilities under a Section 504 plan or an IEP.

For more information about Section 504 requirements, see, OCR's [Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#).

<sup>5</sup>Both public and private schools that receive Federal financial assistance from the U.S. Department of Education must comply with Section 504. However, some Section 504 regulatory requirements are different for public and private school recipients. Public schools must provide a free appropriate public education (FAPE) to all students with disabilities in the public school's jurisdiction, regardless of the nature or severity of the disability. See 34 C.F.R. §§ 104.33 – 104.36. Private schools may not exclude a student based on disability if the student can, with minor adjustments, receive an appropriate education, pursuant to 34 C.F.R. §104.39. When these questions and answers discuss FAPE requirements, private schools are subject to the "minor adjustments" framework set out in 34 C.F.R. § 104.39.



**Question 2**

*What is a school's obligation to provide FAPE under Section 504 to eligible students with disabilities during a school closure when no remote learning is provided, such as occurred during the opening weeks of the pandemic?*

**Question 3**

*What is a school's obligation to provide FAPE under Section 504 to eligible students with disabilities when the school building is closed but remote learning is offered?*

**Question 4**

*Is it discriminatory for a school to prioritize students with disabilities in returning to in-person learning?*



**Free Appropriate Public Education (FAPE)**

**Answer**

Section 504 does not specifically address a situation in which elementary and secondary schools are closed for an extended period (generally more than 10 consecutive school days) because of exceptional circumstances, such as an outbreak of a virus or disease. However, if a school district closes its school buildings to slow or stop the spread of COVID-19 and does not provide any educational services to the general student population, including virtual learning, then it would not be required to provide services under Section 504 to students with disabilities during that same period.

The Department is aware of important questions regarding compensatory services for students with disabilities and plans to address those in a separate guidance document.

**Answer**

School districts must provide special education and related services to eligible students with disabilities in accordance with a plan developed to meet the requirements of Section 504. One way a school can meet the Section 504 FAPE requirements is by implementing an IEP developed under IDEA. The Department understands that during periods in which the school building is closed and remote learning is provided, educational services might be affected. In such a case, either the personnel responsible for ensuring FAPE to a student for the purposes of Section 504 or the IEP team would be required to make an individualized determination for each covered student. This determination focuses on whether, due to remote learning, the student needs adjustments to the special education and related services, such as speech therapy, provided under Section 504 or specified in the student's IEP.

For disputes about an IEP, parents and guardians may use IDEA dispute resolution procedures. Likewise, for disputes about 504 FAPE services, parents and guardians may use the school's Section 504 due process procedures, including an impartial hearing.

**Answer**

No, a school district can consider whether a student has a disability when prioritizing students for in-person instruction. In returning to the physical classroom, schools and school districts also must continue to adhere to the Federal requirement that, to the maximum extent appropriate, students with disabilities receive their education in the same environment as their nondisabled peers. In cases where schools can provide in-person learning only to some but not all of their students [to meet the Centers for Disease Control and Prevention \(CDC\) safety guidelines, for example](#), school leaders should develop criteria

# Q

## Question 5

*Do state-wide, district-wide, or school-wide policies targeting students with disabilities that reduce or limit services for such students, without regard to their individualized needs, violate Section 504?*

## Question 6

*Under Section 504, are schools required to make modifications for students regarding mask wearing?*

# A

for prioritizing the opportunity for such instruction. For example, schools might prioritize offering the option of in-person instruction for younger students, students without reliable access to broadband or technology devices, students with disabilities, students experiencing homelessness, and/or others for whom remote learning is particularly challenging. Whether offering in-person or remote learning, schools must take into consideration the requirements of Federal disability laws that require provision of FAPE and prohibit discrimination based on disability.

## Answer

Yes, Section 504 requires individual decision-making about the type of, frequency of, and manner in which special education and related services will be provided to students with disabilities. Accordingly, state-wide, district-wide, or school-wide policies that are designed to reduce or limit services for students with disabilities, without regard to the individualized needs of those students, violate Section 504.

## Mask Exemptions

## Answer

The CDC [recommends that masks be worn at all times](#) by all people in school facilities, including students. CDC notes, however, that a narrow subset of students and others with disabilities might not be able to wear a mask or cannot safely wear a mask because of their disability.

Students with disabilities who cannot wear a mask or cannot safely wear a mask because of their disability in accordance with CDC guidelines should not be required to wear one. For example, a student with a disability who, for reasons related to the disability, would be physically unable to remove a mask without assistance if breathing became obstructed should not be required to wear a mask. Students with other types of disabilities could also be exempt from wearing a face mask based on factors specific to the student, and [schools should rely on CDC guidance](#) in making such determination.

For the narrow subset of students with disabilities who, because of their disability, cannot wear a mask or cannot safely wear a mask, the school must determine based on a student's individual circumstances whether that student is able to attend school safely if other prevention strategies can be followed, in accordance with CDC guidance. As indicated in the [ED COVID-19 Handbook Volume I](#), prevention strategies might include correct and consistent masking and additional Personal Protective Equipment (PPE) for others who work or learn with the student, avoiding large gatherings in class areas, and maintaining sufficient physical distance. If a student with a disability cannot wear





### **Question 7**

*Masks can hinder communication with people who are deaf or hard of hearing or who have speech disabilities. How can schools ensure effective communication with these students, educators, parents, or guardians?*

### **Question 8**

*Physical distancing might be difficult for students who have both visual and auditory impairments and require tactile interpreting or for students with disabilities whose education needs require close contact with school personnel. Must schools consider the student's 504 plan when addressing the student's disability-related needs that might be affected by physical distancing?*



a mask, maintain physical distance, or adhere to other public health requirements, the student is still entitled to FAPE, which might need to be provided remotely. For disputes about whether a school's decision to provide remote learning services for a student with a disability violates FAPE requirements under Section 504, parents and guardians may use the school's Section 504 due process procedures. Whether attending school in-person or remotely, students who cannot wear a mask due to their disability must not be denied services or disciplined for being unable to comply with mask requirements and must continue to receive instruction on a nondiscriminatory basis.

### **Answer**

Having other staff and students wear masks that include a clear panel (these are masks that cover the nose and wrap securely around the face; this is different from a plastic face shield) might be beneficial for students or educators who are deaf or hard of hearing, have low vision, or have speech disabilities. However, [CDC does not recommend the use of a plastic face shield without the use of a mask](#) because face shields have performed poorly in preventing the spread of respiratory droplets and have not been demonstrated to be effective for preventing transmission of the virus that causes COVID-19. Schools should also consider additional assistive technology devices (such as assistive listening devices that amplify sound and filter out background noise for students who are hard of hearing, or real-time captioning) as well as other types of auxiliary aids and services such as sign language interpreters. These devices and other types of auxiliary aids and services may be useful in facilitating communication between students and educators, as appropriate to the needs of individual students in circumstances where wearing clear panels may not be sufficient to ensure effective communications.

## **Physical Distancing**

### **Answer**

Yes, schools must take an individualized approach in determining how physical distancing might affect the services provided to students with disabilities. This includes decisions about in-person or remote learning, consistent with a student's 504 plan, as appropriate. This individualized approach would be guided by information drawn from a variety of sources, including the student's 504 plan, the student's teacher, parents, medical personnel, and the results of any relevant tests administered to the student.

Also, the use of [positive behavioral interventions and supports](#) might be helpful for students with disabilities, and all students, to provide reminders about new safety procedures. These supports can include modeling and reinforcing desired school behaviors and might include using additional visual cues and reminders, based on the student's individual needs.

# Q

## Question 9

*In circumstances in which schools address safe reopening requirements by cohorting or podding (i.e., when a group of students stay together for all classes and courses throughout the day), must schools develop cohorts and pods in a way that supports including students with disabilities with their nondisabled peers, consistent with Section 504 or students' IEPs?*

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The National Center on Positive Behavior Intervention and Supports (funded by the Department of Education) has [additional information and resources](#) to assist teachers and providers with supporting the social, emotional, and behavioral needs of students adjusting to school. In addition, school psychologists, counselors, and behavioral specialists or local mental health or behavioral health agencies might be able to provide consultation about specific concerns.<sup>6</sup> Students should not be disciplined because, for example, they have a disability that impedes their ability to adhere to physical distancing requirements.

## Answer

Yes. One way to support physical distancing and smaller student groups for both in-person and hybrid learning is through “cohorting” or “podding.” A cohort or pod is a stable group of students with fixed membership who stay together for all courses and activities (including lunch and recess) and avoid contact with other cohorts or pods. As mentioned above, in returning to the physical classroom, schools and school districts must continue to adhere to the Federal requirement that, to the maximum extent appropriate, students with disabilities receive their education in the same environment as their peers without disabilities. When developing cohorts or pods, students with disabilities must be included with their nondisabled peers to the maximum extent appropriate for their needs consistent with Section 504 requirements and public health requirements regarding COVID-19 prevention.



<sup>6</sup>This document contains references to resources that may be available from other public and private organizations. These references are provided for the reader's convenience. However, the inclusion of these resources is not intended to reflect their importance and is not intended to endorse any views expressed or products or services offered. The opinions expressed in any of these resources do not necessarily reflect the positions or policies of OCR, the Department of Education, or the Federal government. OCR does not control or guarantee the accuracy, relevance, timeliness, or completeness of any outside information included in these materials.

# Q

## Question 10

*Must the format of remote instructional content be modified to enable access for students with disabilities?*

## Question 11

*When communicating with families and guardians about health and safety protocols and other information related to in-person and remote learning, must schools ensure that they are communicating in a way that is accessible to family members and guardians with disabilities?*

# A

## Accessibility/Placement

### Answer

Yes, where needed. School districts must provide FAPE in a way that protects the health and safety of students with disabilities and those who provide education, specialized instruction, and related services to these students, in accordance with CDC guidelines. This could include, as appropriate, special education and related services provided through remote learning online or by phone.

Many disability-related modifications and services might be provided effectively in remote learning. These could include, for example, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.

In most circumstances, a school should be able to provide materials in an accessible format, including through [BOOKSHARE](#) or the Department-supported [captioning and descriptions center](#).<sup>7</sup> Where materials are not available in an accessible format, such as an inaccessible scanned PDF file of a short article that does not contain numerous charts and tables, educators could meet their legal obligations by providing students with disabilities with equally effective alternate access to the materials or services provided to other students. In this example, this might include providing a student who is blind with an audio recording of the text of the scanned PDF document.

### Answer

Yes, when providing information to parents or guardians, or seeking input from students' families, school leaders must communicate in accessible formats (such as ensuring that documents posted on the school websites are accessible to individuals with disabilities, and ensuring that documents are posted in languages that parents can understand) and use auxiliary aids and services (such as using a telecommunications relay service when contacting family members or guardians who are deaf or hard of hearing) as needed to facilitate effective communication with people with disabilities.

See Questions 22 and 23 for information about schools' responsibilities for providing information in languages other than English.

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<sup>7</sup>See footnote 6.



**Question 12**

*May a school district refuse to deliver remote learning or other educational services, including related services, until parents or guardians of students with disabilities sign a waiver of their student's right to services required by Section 504?*

**Question 13**

*Are postsecondary institutions that provide remote or hybrid learning required to comply with Federal disability laws?*

**Question 14**

*If postsecondary institutions offer remote learning, what academic adjustments, auxiliary aids and services, and modifications are they required to provide to students with disabilities to comply with Section 504? Are institutions required to offer modifications for instruction offered only in-person?*



## No Waivers Prior to Providing Services Remotely to Students with Disabilities

**Answer**

No, public school districts may not require parents of students with disabilities to waive any rights afforded to students with disabilities under Section 504, including their child's right to receive regular or special education and related aids and services. To require such a waiver might violate the right of students with disabilities to FAPE under Section 504.

## Postsecondary Institutions

**Answer**

Yes. The Department understands that many postsecondary institutions have modified or changed their operations as the COVID-19 pandemic continues. As they make these changes, postsecondary institutions must still meet the requirements of Section 504 and Title II, as applicable.

**Answer**

Postsecondary institutions must provide students with disabilities academic adjustments and auxiliary aids and services, as appropriate. They also must make reasonable modifications to any policies, practices, and procedures to avoid discrimination based on disability. Whether students are attending school in-person or remotely, the institution must ensure that students with disabilities have an equal opportunity to access educational programs, consistent with protecting the health and safety of the student and others at the school.

Colleges, universities, and other postsecondary institutions are not required to modify academic requirements that the school can demonstrate are essential to the program of instruction the student is pursuing or to any directly related licensing requirement. For example, a school would not be required to provide modifications that would lower the school's academic standards. Postsecondary institutions also are not required to provide academic adjustments, auxiliary aids and services, or modifications that would impose an undue burden or cause a fundamental alteration to the service, program, or activity.

# Q

## **Question 15**

*What must a postsecondary institution providing remote learning do if it determines it cannot offer a student with a disability a particular academic adjustment?*

# A

## **Answer**

The Office for Civil Rights encourages institutions to think broadly when evaluating possible solutions, including new technology and other options to meet the needs of students with disabilities. If an institution can establish that providing a particular aid or service would impose an undue burden or result in a fundamental alteration to the service, program, or activity, the institution is not required to provide that particular aid or service. The institution is still required to take other steps—steps that would not result in such alterations or burdens—to ensure that, to the maximum extent appropriate, the person with a disability can participate in, and receive the benefits or services provided by, the institution’s education program or activity.





## Section 2: Title VI (Discrimination based on race, color, or national origin)

### Harassment in Elementary and Secondary Schools and Postsecondary Institutions

#### **Question 16**

*Must a school respond to harassment based on race, color, or national origin by another student, school staff, or others that occurs during remote instruction?*

#### **Answer**

Yes, a school must respond to harassment based on race, color, or national origin that occurs during remote instruction and creates a hostile environment. Harassment might include verbal attacks, such as racial slurs, graphic and written statements (including using cell phones or the internet on school platforms), name-calling, or physical threats or acts. For example, this could include harassment targeting a student because of the student's race or actual or perceived shared ancestry or ethnic characteristics.

A hostile environment occurs when harassment denies or limits a student's ability to participate in or benefit from educational programs and activities. For example, offensive comments about the race of particular students during remote instruction, leading to decreased class participation by the targeted students, could constitute evidence that a hostile environment has been created.

For more information and examples of harassing conduct under Title VI, please see OCR's [October 2010 Dear Colleague Letter on bullying and discriminatory harassment \(OCR\)](#)<sup>8</sup> and these additional resources:

- [Racial Incidents and Harassment Against Students](#)
- [Combating Discrimination Against AANHPI and MASSA students,](#)
- [Combating Discrimination Against Jewish Students.](#)

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<sup>8</sup> The standards for allegations of sexual harassment are governed by regulations under Title IX, which prohibits discrimination based on sex. U.S. Dep't of Educ., [Final Rule, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#), 85 Fed. Reg. 30,026 (May 19, 2020).

# Q

## **Question 17**

*What must schools do if an incident of harassment based on race, color, or national origin is reported, or school officials learn about incidents of harassment in remote or in-person instruction or in other school-related activities?*

## **Question 18**

*Are schools responsible for prohibiting discrimination based on race, color, or national origin in administering school discipline, even during remote instruction?*

# A

## **Answer**

Under Title VI, once a school is aware that discriminatory harassment has occurred, a school must take prompt, effective, and developmentally appropriate steps that are reasonably calculated to end harassment that creates a hostile environment based on race, color, or national origin—including peer-to-peer student harassment—for both in-person and remote learning. The school must also take steps to address the harassment’s effects, eliminate the hostile environment, and prevent the harassment from recurring.

Appropriate steps to end harassment could include separating the alleged harasser from the student who is being harassed, providing training for the alleged harasser, providing counseling for the student who is being harassed and/or the alleged harasser, or taking disciplinary action against the alleged harasser. These steps should be developmentally appropriate for the student or students involved, should afford both parties basic due process protections, as appropriate, and should not penalize the student who was harassed. Also, depending on the extent of the harassment, the school might need to provide training or other interventions for the larger school community on recognizing and knowing how to respond to harassment.

For more detailed information, please see OCR’s [October 2010 Dear Colleague letter on bullying and discriminatory harassment](#). As explained on page 2 of this Q&A, a student or parent can file a complaint with OCR at any time during this process, including if the student or parent is not satisfied with the school’s response or if the harassing conduct continues.

[For questions related to harassment based on sex, including sexual orientation and gender identity, please see Questions 24-26.](#)

## **Discipline in Elementary and Secondary Schools**

### **Answer**

Yes. Title VI protects students from discrimination based on race, color, or national origin in all programs and activities a school operates. This applies to both in-person and remote learning.

# Q

## **Question 19**

*What can parents or guardians do if their child's school has inadequate resources for addressing the COVID-19 pandemic or is offering less instructional time with a teacher or fewer devices for remote learning when compared to other schools that are attended predominantly by students of another race, color, or national origin?*

## **Question 20**

*Can students with undocumented status enroll in a new school in the location where they are now living?*

# A

## **Resource Equity in Elementary and Secondary Schools**

### **Answer**

States, school districts, and individual schools have an obligation under Title VI to provide students with equal access to educational resources without regard to race, color, or national origin. These educational resources include, for example, access to safe school facilities, instructional materials and technology, and skilled educators. This protection has remained in place throughout the pandemic. If parents or guardians believe that state education officials or their child's school district or school has violated Title VI, they may file a complaint with OCR. In investigating a complaint based on inequality in school resources, OCR may look at whether there are significant racial disparities in access to a particular education resource or patterns of racial inequality across a variety of resources. OCR's [October 2014 Dear Colleague Letter on Resource Comparability](#) provides additional information about school districts' obligations and describes how OCR evaluates complaints about unequal access to educational resources. For information on how to file a complaint with OCR, please see page 2 of this Q&A.

## **Elementary and Secondary School Students Who Have Moved, Are Experiencing Homelessness, or Are Undocumented**

### **Answer**

Yes, public schools at the elementary and secondary levels may not bar students from enrolling in schools based on the citizenship or immigration status of the students or their parents or guardians. For more information, please see OCR's [May 2014 Dear Colleague Letter on School Enrollment Procedures](#), issued jointly with the Department of Justice.



# Q

## Question 21

*When a family's residency status has changed as a result of COVID-19 (for example, a parent lost a job, causing the family to move or lose access to stable housing), can students enroll in a new school in the location where they are now living?*

# A

## Answer

A state or school district is permitted to have residency requirements for students to enroll in school. Districts typically accept a variety of documents as proof of residency, such as a telephone or utility bill, mortgage or lease document, parent affidavit (i.e., a written statement affirmed or under oath), rent payment receipts, a copy of a money order made for payment of rent, or a letter from a parent's employer that is written on company letterhead.

However, these kinds of proof-of-residency requirements do not apply to children and youth who are considered homeless under the Federal McKinney-Vento Homeless Assistance Act (42 U.S.C. §§ 11301 et seq.). The McKinney-Vento Act defines the term "homeless children and youth" as including, in part, "children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement," as well as children of migratory agricultural workers.

Under this law, state and local educational agencies are required to provide students experiencing homelessness with access to schools and support for their attendance and success, even if their families cannot produce the documents that would otherwise be required to prove residency within a district.



# Q

## Question 22

*Are schools required to provide language services to students who are English learners if instruction is being delivered remotely?*

# A

## English Learners in Elementary and Secondary Schools

### Answer

Yes, if a school district is providing remote learning for some or all of its students, it must provide language services to English learners who are learning remotely, as well as to English learners who choose in-person learning. During remote instruction, English learners must receive appropriate language services and supports to the greatest extent possible, including to promote their English language development and help them meaningfully access their content classes that are held remotely.

Appropriate language services and many language accommodations for classwork and assessments can be provided effectively online. These services include, for example, English Language Development or English as a Second Language classes, sheltered content instruction, bilingual content instruction, or dual language classes. Examples of language accommodations may include extensions of time for assignments, videos with captioning or embedded interpreting, accessible or translated materials, an online bilingual glossary or dictionary, or other technological solutions (e.g., language assistance via video conferencing).

While English learner programs may require English learners to receive separate instruction for a limited period of time, school districts must carry out their chosen program in the least segregative manner consistent with achieving the program's stated educational goals. If a school provides an option for students who are proficient in English to receive in-person instruction, English learners should also receive an opportunity to receive in-person instruction.



# Q

## Question 23

*What responsibilities do schools and school districts have to communicate information about remote learning and school health and safety measures to parents and caregivers in a language that families can understand?*

# A

## Answer

When a school or school district officials provide information to students, parents, and guardians about any program, service, or activity of a school or school district, they need to provide meaningful access to this information to English learners and parents and guardians in a language that they can understand. This includes information related to school health and safety measures, [information about COVID-19](#) and actions the school is taking in response to the pandemic, and information about remote learning and how to contact and communicate with teachers. For example, school districts may provide meaningful access to information through the use of translators or interpreters who have knowledge in both languages of any specialized terms to be used in the communication at issue. In addition, school districts must develop and implement a process for determining whether parents are limited in English proficiency and what their language needs are.

For additional information about school districts' obligations to ensure meaningful communication in a language that parents and guardians can understand, please see OCR's [January 2015 Dear Colleague Letter related to English Learners and Limited English Proficient Parents](#), issued jointly with the Department of Justice.





**Question 24**

*Must schools accept reports and complaints of discrimination based on sex under Title IX, including sexual and gender-based harassment, about incidents that take place in remote learning or other remote educational activities?*

**Question 25**

*Is a school required to investigate new and pending sexual harassment complaints under Title IX if it offers only remote learning?*



**Section 3: Title IX (discrimination based on sex, including sexual and gender-based harassment)**

**Answer**

Yes, schools must accept reports and complaints of discrimination based on sex while providing remote learning, including harassment that occurs on or through remote learning platforms. This includes, for example, complaints of sexual harassment, sexual assault, dating violence, domestic violence, stalking, and harassment based on gender identity and sexual orientation.

Schools must promptly notify their students and employees about changes in the methods for receiving complaints due to COVID-19. For example, if the Title IX Coordinator’s contact information has changed due to remote work, or if a school is offering only a web-based portal for reports or complaints of harassment rather than permitting in-person appointments, the school should provide that information to its students and employees by prominently displaying current information on the school’s website or by other comparable means.

Schools must continue to offer academic adjustments and supports to students who report harassment and to students who are respondents in Title IX cases. These adjustments and supports must be offered to help restore or preserve equal access to educational opportunities for students, protect the safety of all parties and the institution’s educational environment, and deter discriminatory harassment.

**Answer**

Yes, schools must follow their policies for receiving and responding to reports of sexual harassment and may not adopt a policy of putting investigations or proceedings on hold during the pandemic. If a school has modified the ways it receives reports and complaints under Title IX because of COVID-19, the school must publicize those changes for its students and employees on its website or by other means in a language and alternative formats that allow all students and employees meaningful access to the information. (For more detail, see Question 24.)

# Q

## Question 26

*If a school is experiencing operational challenges relating to COVID-19, including suspending most or all in-person instruction and offering remote learning instead, may it modify its Title IX procedures for resolving sexual harassment complaints?*

# A

## Answer

Yes, to a limited degree. The 2020 amendments to the Title IX regulations (“2020 amendments”) require that a school’s grievance process for addressing formal complaints of sexual harassment include reasonably prompt time frames for conclusion of the process. These regulations apply to alleged sexual harassment, including sexual violence, that occurred on or after August 14, 2020 (see 34 CFR § 106.45(b)(1)(v)).<sup>9</sup>

The 2020 amendments allow for the temporary delay of the school’s grievance process or the limited extension of time frames for good cause. The ongoing situation related to COVID-19 may, in some circumstances, qualify as a “good cause” for reasonable, temporary delays or extensions. However, when deciding whether to grant a delay or extension, schools must balance the interests of promptness, fairness to the parties, and accuracy of adjudications. In addition, the school must send written notice explaining the delay or extension to all parties.

For sexual harassment that allegedly occurred before August 14, 2020, OCR applies the regulations that were in effect before that date, including the earlier version of Section § 106.8 (in effect before August 14, 2020). This section requires that a school provide prompt and equitable resolution of student and employee complaints of sex discrimination, including sexual harassment. The school must conduct an adequate, reliable, and impartial investigation that provides the parties with an equal opportunity to present witnesses and other evidence. A school may implement its procedures remotely, using appropriate technology.

COVID-19-related disruptions do not relieve schools of their obligation to comply with these requirements under the 2020 amendments or earlier regulations. Schools must not delay investigations or hearings solely because in-person interviews or hearings are not feasible. Instead, schools must use technology, as appropriate for students who have access to technology, to conduct activities remotely, in a timely and equitable manner, and consistent with the applicable law. COVID-19-related delays may be unavoidable in certain circumstances. In those cases, schools must promptly notify all parties of the reason for the delay and the estimated length of the delay, in addition to important updates about the investigation.

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<sup>9</sup> U.S. Dept. of Educ., [Final Rule, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#), 85 Fed. Reg. 30,026 (May 19, 2020).

# Q

# A

Schools also must carefully consider confidentiality and privacy implications of electronic communications and online investigations or hearings, including obligations under the Family Educational Rights and Privacy Act (FERPA). The Department’s Student Privacy Policy Office (SPPO) has prepared a [variety of FERPA and virtual learning-related resources](#), and other related FERPA materials.

### Question 27

*Are school districts prohibited from retaliating against students, parents, caregivers, or others who complain about civil rights violations under one of the laws that OCR enforces?*

### Answer

Yes, the Federal civil rights laws that OCR enforces, including Title VI, Title IX, Section 504, and Title II, make it unlawful to interfere with any right or privilege secured by these laws. This means that a school or school district must not retaliate against someone who has brought civil rights concerns to a school’s attention, including by making a formal or informal complaint, testifying, or participating in an OCR investigation. OCR’s [April 2013 Dear Colleague Letter on Retaliation](#) provides additional information about school districts’ obligations in this area. For information on how to file a complaint with OCR, please see the top of this Q&A.



The following OCR guidance documents and resources are discussed in this Q&A:

- [Racial Incidents and Harassment Against Students \(March 1994\)](#)
- [Dear Colleague Letter on bullying and discriminatory harassment \(October 2010\)](#)<sup>10</sup>
- [Dear Colleague Letter on Retaliation \(April 2013\)](#)
- [Dear Colleague Letter on School Enrollment Procedures \(May 2014\)](#)
- [Dear Colleague Letter on Resource Comparability \(October 2014\)](#)
- [Dear Colleague Letter on English Learners and Limited English Proficient Parents \(January 2015\)](#)
- [Combating Discrimination Against AANHPI and MASSA students \(June 2016\)](#)
- [Combating Discrimination Against Jewish Students \(January 2017\)](#)

You can find more information, including fact sheets and policy guidance, in the [Reading Room](#) on OCR's website.

*Thank you for reading this Q&A and for your efforts to support equal educational opportunities for all of our nation's students.*

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<sup>10</sup> The standards for allegations of sexual harassment are governed by the Title IX regulations. U.S. Dept. of Educ., Final Rule, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026 (May 19, 2020).